Supreme Court, U.S.
FILED

(1)

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NO. OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER 1994 TERM

JEROME H. FIELD,

Petitioner,

V.

DONALD J. EASTON,
NAP'S TRUCK LEASING CORP. and
SWAN TRUCKING CORP.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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55pp

QUESTIONS PRESENTED

1. DID THE UNITED STATES DISTRICT FOR THE EASTERN DISTRICT of NEW YORK AT TRIAL EXCEED ITS DISCRETION IN IMPOSING SANCTIONS WHICH VIOLATE THE LAW, NOT PERMIT ESSENTIAL EVIDENCE SO THAT THE JURY COULD NOT PERFORM ITS CONSTITUTIONAL FUNCTION.

2. VIOLATE RULE 11 FRCP, WHICH EXPRESS-LY (Par. D,) DO NOTPROVIDE FOR ANY TYPE OF SANCTION FOR DEPOSITIONS. WAS THE COURT ACTING OUT OF ANGER THEREIN.

3. DID THE COURT VIOLATE THE PLAINTIFF's FOURTEENTH AMMEND. RIGHTS.

4. DID THE COURT VIOLATE THE PLAINTIFF'S SEVENTH AMMEND. RIGHTS TO TRIAL BY JURY, BY ITS ACTIONS

5. DOES THE ACTION OF THE COURT

VIOLATE PRECEDENT'S ESTABLISHED BY COURTS OF A SIMILAR NATURE IN OTHER JURISDICTIONS.

6. DOES THE TAKING OF MONEY FROM THE PLAINTIFF UNDER THE GUISE OF PENALTIES CONSIST OF TAKING BY DUE PROCESS 5th Ammend.

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AMENDMENTS, RULES, CODES

FRCP Rule 11

UNITED STATES CONSTITUTION

FOURTEENTH AMENDMENT

UNITED STATES CONSTITUTION

SEVENTH AMENDMENT

REPORTS OF OPINIONS DELIVERED IN THE PETITIONER'S CASE

APPENDIX -Listed

1. Judgment In a Civil Case, U. S. District Court, Eastern District of New York, CV 90-3743 (EHN), filed July 2, 1993.
2. Order of U. S. D. C. Eastern District of New York, motion for a new trial and defendant's motion for sanctions filed Nov. 18, 1993.
3. Notice of Appeal to the United States Court of Appeals filed November 5, 1993.
4. Decision and order of the United States Court of Appeals for the Second Circuit, dismissing and affirming the decision of the

U. S. Court of Appeals for the Second Circuit, denying the and denying rehearing.

CONSTITUTIONAL PROVISION

U. S. Const. amend.XIV (1868)

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Amend. VII

In suits at Common Law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall otherwise be re-examined in any Court of the United States, than according to the Rules of the common law.

JURISDICTIONAL STATEMENT

This case came to be filed and heard in the United States District Court for the Eastern District of New York, based upon Diversity of Jurisdiction as between parties(N.Y.) and (Penna.)

Pursuant to such trial was had and Petitions for new trial, Appeal and Rehearing of Appeal filed, All Denied.

Petitioner now seeks jurisdiction of this Court, pursuant to review the orders and judgments by a writ of Certiorari to be invoked under the provisions of 28 United States Code Par. 1257, and such other rules.

STATEMENT OF THE CASE

On September 12, 1990, the plaintiff was driving his car on a Interstate Highway, passing through Brooklyn, N. Y. This was near the Atlantic Ave. entrance to such highway and across the street from the Long Island College hospital where he ended his day.

Plaintiff alleges, that he was struck from the rear, by a 56 foot tractor trailor. This was a rig registered to a Penna. corporation, Swan Trucking Corp., through a Naps Truck Leasing Inc. out of Maine. Obviously there was some interelationship between the two.

The plaintiff alleges further, that the tractor trailor, violated statute

should not have been on the road, and was defective as driven, ie, the driver was driving beyond his hourly capacity. The front window was cracked and defective. The brakes were faulty. There was a crack in the chasis of the trailor, lights were defective, there existed fumes seeping into the driver's compartment, and the vehicle was so otherwise unfit and had not been properly inspected or repaired.

This was all revealed in reports made by the Bureau of Hgwy. Safety a governmental agency, based upon a information filed by the plaintiff with the agency. It took several months to gather the material and the report was finally made in Jan.

of 1991. The plaintiff eventually subpoened in the report and a governme nt agent to testify, and the complete report, appears as Exh. A in plaintiff 's appendix filed with the Court of Appeals. The court denied the introd- uction of this report in its entirety. The jury had no knowledge at any time that such report existed or a witness was available to testify. This critically affected the issue of liability, which the jury heard and found as against the plaintiff. It was the court that ruled that this report could not be admitted. The defendant's Swan Trucking Corp. failed to timely notify the government agency of this accident.

As a result of this accident, the

plaintiff was taken to the hospital and was in theintensive care unit for several days before being released.

The plaintiff alleges that the physical damage as a result of this accident, included, but was not limited to:

A fracture of his sternum.

Four upper and one lower herniated disc.

A fractured heel of the right foot.

He subsequently was treated by private doctors for these conditions, and is presently being treated for the back injuries to date.

Plaintiff further alleges that he never had these conditions prior to the accident, and the defendant's made extensive and exhaustive investigation therein and found none.

Plaintiff brought suit for these

injuries in the U. S. District Court for the Eastern District of New York and the case came to trial, before the visiting judge the Hon. Bernard A. Friedman, of Detroit, Mich. on July 19 and 20th, 1993.

The case was further heard by Judge Friedman on a motion for a new trial on October 15, 1993.

Over the objections of plaintiff's counsel, the issues were bifurcated. There was therefore, no trial on the damage portion of plaintiff's action. The jury was not permitted to see or hear about the government file. The trial was bifurcated as to the issue of damages, so no medical testimony could be introduced.

The attorney for the defendant made

inflmatory remarks, questioning the plaintiff's honesty as a lawyer. The judge failed to charge the jury properly and in addition made remarks which the court reporter picked up of a slurious nature.

At the motion for a new trial on October 15, 1993, the court imposed sanctions, allegedly due to the fact that at deposition the plaintiff permitted a engineer, who used a textbook to testify. The plaintiff alleges that he acted in good faith and in addition there are specifically no sanctions to be imposed for anything relating to evidence or testimony therein. This is specifically a part of Rule 11. Sect. D, as presenly found.

The sum of $2180. has been assessed

as against the plaintiff in this action in the District Court.

Based upon the evidence admitted by the court after two days of trial, on July 20th, of 1993, the jury after 30 minutes of deliberation, the jury found against the plaintiff and thus liability was not established and the case was dismissed.

On the 15th day of October, 1993, a motion for rehearing was made before the same judge, the Hon. Bernard Friedman, sitting by designation. The judge voiced his extreme displeasure that the plaintiff would even move for a new trial. It indicated that it was close to granting sanction for that, and had he been in Detroit, a dire fate would await him. He granted

the defendant's Rule 11 sanction in the sum of $2,081.00, of which the defendant had originally wanted $941.000, for the plaintiff allegedly bringing in a unqualified expert to a deposition. In this regard there exist no specific qualification in New York State, the expert was a licensed engineer and contrary to the decision of the appeal court, did not read only from texts. The defendant has never presented any court, the transcript, nor any form of civilized accounting record. The court based this sum on the fact that counsel was deemed a fair lawyer and presented a good case. Also, in the portions of the United States where this judge sits the sum of $119.00 a hour was considered most reasonable.

The court of appeals for the Second Circuit, rejected the arguments of this appellant, spoke little or nothing of the law presented by the appellant and dismissed the appeal in its entirety It is from such that this appellant does now appeal to this body.

ARGUMENT

The plaintiff now argues, that the court exceeded its judicial discretion. There is no plaintiff, denied the right to present his case, who can convince a jury.

This plaintiff has searched diligently and can find no other case for comparison where a plaintiff comes into a court of law, with serious injuries, is not permitted to put in his case. suffers from serious injuries as a result of this accident (five herniated discs, a fracture to the sternum and a fracture to the foot), and is given a penalty of $2,081.00, pursuant to F R C P, 11, when Par. D, specifically prohibits such for anything relating to discovery.

The appeal court totally ignores such puts it in the column of judicial discretion.

Further under judicial discretion, is not to permit for the jury to deliberate on a report specifically drawn by a agency of the United States Government for use under these circumstances, indicating a improper driver by statute, a vehicle which was totally defective, bad brakes, bad lights, cracked and fogged windshield smoke or fumes comire into the cab compartment. The driver testified in court that everything was fine. The report further indicated that at least in 16 different occassions this defendant had frauded its records, or

not reported similar violations.
The Penna. State Highway Dept. had similar experiences with this defendant. Not even to test the credibility of the witness could this report have gained admission. In addition a witness from the Bur. of Safety was subpoened and ready to testify on this report.

The court further found that it would bifurcate the trial despite New York law which specifically does not permit bifurcation under these circumstances. When the defendant claims the injuries sustained, did not arise from the incident of the accident, both issues must be presented to the jury simultaneously.

A treating doctor, who within a week after the accident, observed and made

to purplish bruises running through the back of the plaintiff.

His notes and observations were not permitted entry. After all the court deemed it proper to bifurcate.

This doctor would have clearly testified that the bruises, could not conceivably come from anything which the defendant alleged happened at the accident scene. The jury would have drawn only one conclusion from the doc tors reports and the Safety reports that the accident happened the way the plaintiff alleged it did. There were only two witnesses to the accident the truck driver, defendant and the plaintiff. Unfortunately, the Court of Appeals, sitting three years later, could not visualize the scene.

The appeal court finds little or nothing in the government witness who would have reported and commented on the liability portion of the accident. So severe that the government was obligated to make such report, even though the defendant did not timely file. This in a accident where the plaintiff is now crippled and nearly lost his life. Where the defendant driver taking the plaintiff to the hospital remarked, I am sorry I was sqeezed over myself".

Further the doctors reports would have indicated to the jury, based on the examinations and bruises, that there was no other way the plaintiff could have sustained such injuries but by falling to the ground.

The defendant's version, that the plaintiff deliberately, under some sort of death wish rammed into the rear of their 56 foot tractor trailor. Such travelling the road at about 35 miles a hour, and admitted seeing the plaintiff from forty feet away. The plaintiff was struck from the rear. There exists no dispute by either party to such.

The plaintiff according to defendant's versions sustained his injuries while sitting in his vehicle, which in itself sustained only minor damage.

Surely the court took away the constitutional right of the jury to fully deliberate, granted no jury to

the plaintiff, and had prejudged the case and when plaintiff voiced objection at Oct. 15, 1993, motion for new trial would have given counsel for the defendant virtually any penalty they asked for, without any reason therein. The reason this court took, has no validity in law whatsoever. The appeal court, in their review even fails to check this segment of Rule 11.

Unheard of the defendant's counsel was permitted to go on record, with remarks to the jury, that this plaintiff, would if he could sue t hem, was a lawyer, who had planned the whole incident, and the misfortune arose from the fact that his defendant happened to be passing.

All Judge Friedman permitted and

plaintiff objects several months later he is assesed the sum of $2,081.00, to ease his pain and suffering.

Further Judge Friedman, offers no substantial opinions as to his review and findings. There exists not one paragraph of law to back his findings.

We find a court, who read the law from the writings of the defendant's counsel, submitted fully 2 months prior to trial. Counsel was then able to predict with certainty, how the trial would go and what would be of essence therein .Although submitted nothing of plaintiff's requests to charge were admitted.

Yet the appeal court, ignores such totally, although they had the entire record before them, makes no comment

submits the entire matter to appropriate judicial discretionand sustains the district court.It should be noted that their deliberation consisted of 1 day, if it was not decided prior to argument. Despite the law clearly stated in Par . D, of Rule FRCP11, it fails to examine such and allows this also in pursuant to judicial discretion.
All the court wanted the jury to hear was what discovery had broughtforth to the defendant's benefit. There actually consisted no jury, no deliberation- the jury system was voided in its entirety. It could not decide otherwise on what it heard or was permitted to hear. This is judicial discretion.
A party to a civil action is deprived of the constitutional right for a

jury to perform its constitutional function. They sit as a ornament at the pleasure of the court, who for whatever reason, prejudged the action, agreed en toto, with the law as provided by defendant's counsel fully two months prior to trial. When plaintiff objects several months later, he is assesed a goodly sum of money, considering his age and financial condition.

The court finds further that while two errors exist in the charge, this is only a civil action so it should be permitted.

Plaintiff alleges he did not even have the basic elements of a fundamentally fair trial as granted in any civilized community.

Too much nowadays, do trial judges usurp the function of the

jury system, glance over their true function as the constitution provides and allow themselves to be replaced by a experienced judge. They return home actually feeling that they have something to do with the judicial They did hear in their history books that this had something to do with the American Revolution.

The real purpose of this appeal is to send a message to courts who replace themselves for a jury and thus show their contempt for the jury system, that there is a limit to this form of abuse. More and more we find courts squeezing out the jury by what the court of appeals in this case calls judicial discretion.

Where is the line that stops this form of discretion, that a person may suffer for the balance of their lives because a judge has so developed a personal conflict or so prejudged a case that the party is denied the Seventh Amend. right to trial by jury.

The unclear words 'judicial discretion' now substitute for the fourteenth and seventh ammendments. Supposedly Rule 11 now denies the party his right to trial before property is taken from him.

The fifth ammendment is now stricken. Many scholars have in the past been critical of FRCP 11, but the penalties here inflicted do not have anything

to do with this Rule 11. Truly this type of ingenuity was never indicated when our constitution was brought forth.

It is little wonder that this case remains unpublished by the court, for if this type of precedent were established, at least three amendments to our constitution would be eliminated.

Rule 11 is indeed a ripe subject for legal scholars.

LAW OF THE CASE

On the Admission of the D. O. T.

in the Safety and investigative report.

A summary of investigative findings

Admissable pursuant to Rules 803 (8)

and Rule 1006 F R E also, U. S. v.

Kim 595 F. 2d 755, 764 n 43 D. C.

Cir. (1979). Williams v. Humble Oil

53 F. R. D. 694, 698 E. D. La. 1971,

reports prepared within a reasonable

time.

See official records. Knepper official

records as evidence 20 ins. counselJ 88

Wallace Official written statements

46 Iowa Law Rev. 256, (1961). U. S.

v. Sc hool Dist. of Ferndale, Mich.

577 F. 2d, 1339, 6th Cir. (1978).

Chandler v. Roudebush, 425 U. S. 840,

n. 39, 96 S. tt. 1949, L. Ed. 2d , 416 (1976).

Hackley v. Roudebush. 171 U. S. App. D.C . , 376, 520 F. 2d, 108, 150, 151, 195 (1975).

If not even on the issue of credibility the jury had the right to deliberate on such. Thus deprived of their constitutional function they thus deliberated and went home.

On the issue of bifurcation. While pursuant to FRCP 42 (a) (b), the court is allowed discretion, it usually follows the forum state. New York follows Culley v. City of New York, 25 A. D. 2d, 519, 267 NYS 2d 282, 1st DEpt. (1966). also Erie v. Tompkins 1938, 304 U. S. 64, 58 S. Ct.

817, 82 L. Ed. 1188, mandates that

state law provide the rule of decision as to claims or defenses. . FRE 501. The rules of the forum state are to be used. Klaxon Co. v. Stentor Elec. Mnfg. Co. 1941, 313 U. S. 487, S. Ct. 1020, 85 L. Ed- 1477).

The jury could not properly deliberate without such evidence. Indeed the jury must have thought the whole thing was some sort of joke, they heard literaly nothing of the case.

The summation of counsel for the defendant was inflammatory and prejudicial The court never sought to intervene or instruct the jury.

It is unjust comment and appeals to fear, prejudice and passion.

The cumulative effect of such mandates retrial. See the law of the forum state, Williams v. Bklyn. Elec. R.R. 126 N. Y. 26 N. E. 1048 Cherry Creek Ntl. Bank & Fidelity Ins. Co. 207 A. D. 787, 202 N. Y.S. 611, McCabe v. Queensboro Farms 21 A. D. 2d 294, 228N.Y.S. 2d 44. Further the defendant's counsel overstepped his bounds and in several instances where his experts could not or would not testify, he was the unsworn witness filling in the cracks.

That the charge was defective even this appeal court agrees. It advises in two instances, but fails to provide which two. Nonetheless the charge was flawed and the jury had to abide by same. Whether it was a small accident or a (31

large one can not be distinguished. The jury trusted the court and the results were evident.

How could the appeal court distinguish the percentiles.

As for the penalty under FRCP 11. Rule 11 never applied to this case, the defendant had to secure some sort of penalty, and so it chose a incident or rather created one, the questioning of a witness, and should have early given up, and now expects this appellant to pay for such. A signal should be sent, that law is not a scheme for enrichment, the courts should not be used as a gambling casino, to add a little additional to the loot to be carried away.

Nor should it be used as a attempt to intimidate, to force a party to concede, because he is not well to do and such penalties may destroy his financial abilities.

There was no breaking of Rule 11, Par. D, of such rule specifically permits the very conduct the conduct the defendant and the court object to. The plaintiff can find no similar case or penalty for this form of conduct in any form of case law. It is truly unique and presents a bad precedent. No defendant or plaintiff will hence be free from severe sanction for conductiong t h eir burden of discovery. As the defendant stated he realized in the beginning that this witness was not suitable but continued for three

hours to run up a bill and now personally profit from such.

Defendant file a improper affirmation and motion and this does run to Rule 11 sanctions.

The appeal court, actually rubber stamped such conduct and obviously gave no heed to the law.

NO.

IN THE

Supreme Court of the United States

OCTOBER 1994 TERM

JEROME H. FIELD,

Petitioner,

V.

DONALD J. EASTON,
NAP'S TRUCK LEASING CORP. and
SWAN TRUCKING CORP.,

Respondents.

APPENDIX TO

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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-APPENDIX-

REPORTS OF OPINIONS DELIVERED IN THE PETITIONER'S CASE.

(All listed in Appendix)

1. Judgment in a Civil Case U.S. District Court E. D. N. Y. i

2. Plaintiff's motion for a new trial. 1

3. Decision and Order of the United States Court of Appeals for the Second Circuit. 3

4 Petition for Rehearing to the United States Court of Appeals for the Second Circuit, Denied. 10

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF
NEW YORK

JEROME H. FIELD

Plaintiff

v.

DONALD J. EASTON. SWAN
TRUCKING CORP. and
NAP'S TRUCK LEASING CORP.

Defendant's

----------X

JUDGMENT IN A CIVIL
CASE

Filed in Clerk's Office
U. S D. C. E. D. N.Y.
July 20, 1993

Jury Verdict. This action came before the Court for a trial by jury.. The issues have been tried and the jury has rendered its verdict.

IT IS ORDERED AND ADJUDGED THAT

THE JURY FIND IN FAVOR OF THE DEF-
ENDANTS AND AGAINST THE PLAINTIFF
AND THAT THE COMPLAINT IS DISMISSED.

July 20, 1993

Robert C. Heineman
Clerk

By Deputy Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

JEROME H. FIELD

Plaintiff

90 CV 3743
E H N

-against-

DONALD J. EASTON, NAPS TRUCK LEASING CORP., SWAN TRUCKINGS CORP.

Defendants

Filed Nov. 18, 1993.

----------X

Plaintiff's motion for a new trial and defendant's cross motion for sanctions was argued to the court on October 15, 1993. The Hon. Bernard A. Friedman, District Judge.

It is ordered that the motion of Plaintiff JeromeH. Field, for a new trial is denied.

It is further Ordered that the cross

motion of Defendant's Donald J.Easton, Nap's Truck Leasing Corp. and Swan Trucking Corp., for sanctions is granted and that Plaintiff Jerome H. Field, shall pay to defendant's the sum of Two Thousand Eighty One (2,081.00) Dollars with interest thereon at the rate provided by law.

Dated: Detroit, Mich.

October, 1993

U. S. District Judge
Bernard A. Friedman

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals , held at the United States courthouse, in the City of New York, on the 25th day of April one thousand nine hundred and ninety four.

Filed 4/26/93

Present:

Hon. James L. Oakes
Hon. Amalya L. Kearse
Hon. J. Daniel Mahoney

Circuit Judges

Jerome H. Field

Plaintiff - Appellant

v. # 93-7775

Donald J. Easton, Nap's Truck Leasing Corp. Swan Trucking Corp.

Defendant- Appellees

Appeal from the United States District Court for the Eastern District Of New York.

This case came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York, and was argued by plaintiff pro se and by counsel for defendants.

On consideration thereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it h ereby is affirmed.

Plaintiff, Jerome H. Field, who was represented by counsel at trial and at various other stages below, appeals pro se from a judgment of the United States District Court, for the Eastern District of New York, Bernard A. Friedman, Judge, of the United

States District Court for the Eastern District of Michigan, sitting by design ation, dismissing his complaint following a jury verdict in favor of defendant's on issues of liability in connection with Field's negligence claims and imposing sanctions upon Field in the amount of $2,081.00. On appeal Field principally challenges the district court's a. bifurcation of trial, b. exclusion of certain documents from evidence, c. instructions to the jury and d. award of sanctions to the defendants. We find no ground for reversal.

Under Fed. R. Ci. P. 42 (b), the District Court has discretion to order seperate trials on the issues of liability and damages. Its order

for such bifurcated trias will not be disturbed in the absence of a abuse of discretion. See e.g. Getty Petrol. Corp. v. Island Trans. Corp. 862 F. 2d 10, , 14-15, 2d Cir. 1988 cert. dnd. 490 U. S. 1006 (1989). We see no abuse of discretion here. Field's claim that the jury could not assess liability without considering evidence as to the extent of his injury is unpersuasive.

The trial court has broad discretion over the admission of evidence. Healey v. Chelsea Rsces. Ltd. 947 F. 2d611, 619 (2d Cir. 1991. Its eval- of relevance is entitled to substant- ial deference and will not be dist- urbed unless it evidences a abuse of discretion. See e. g. George v. Celotex Corp. 914 F. 2d 26 28 2d Cir.

1990) McNeilab, Inc. v. American Home Products Corp., 848 F. 2d 34, 38 2d Cir. 1988. The exclusion of the official documents proffered by Field, which appear to have little to do with the events at issue here was not a abuse of discretion.

The challenge of the trial court's award of sanctions against Field pursuant to F.R. C. P. 11, in connection with his designation of a expert witness is likewise subject to review under a abuse of discretion standard. See Cooter & Gell v. Hartmark Corp. 496, U. S. 384, 403 (1990).

Here the court awarded sanctions because Field designated as a expert witness a person whose 'expertise' was revealed at defendant's deposition

to consist solely of his reading portions of textbooks. This decision was not a abuse of discretion. As to Field's challenge to the trial court's instructions to the jury, it appears that the court's language in two instances could have been more precise. The jury charge in a civil case is not expected to be prefect, however, and it provides no ground for reversal, if taken as a whole , it is 'fundamentally fair' New York v. Pullman, Inc. 662 F. 2d 910, 91 2d Cir. (1981) cert. dnd. 454 U. S. 1164 (1982). Read as a whole the instructions here, presented the liability issues to the jury in a evenhanded manner, and we find no basis for reversal. Field also makes a number of other arguments that do not warrant discussion.

We have considered all of his arguments on this appeal and have found in them no basis for reversal.

The judgment dismissing the complaint is affirmed

Defendant's request fo sanctions in connection with this appeal is denied.

James L. Oakes U. S.C.J.

Amalya L. Kearse U.S.C.J.

J. DAniel Mahoney, U.S.CJ.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Filed: 5/23/94

At a stated term of the United States Court of Appeals for the Second Circuit held at the United States Courthouse in the City of New York, on the 23rd day of May one thousand nine hundred and ninety four.

----------X

Jerome H. Field

Plaintiff-Appellant

v. No. 93-7775

Donald J. Easton, Naps Truck Leasing Corp. Swan Trucking Corp.,

DEfendant-Appellee

----------X

A petition for rehearing having been filed herein by Plaintiff-Appellant, Jerome H. Field in the

above entitled matters.

Upon consideration by the panel that decided the appeal, it is Orderedthat said petition for rehearing is DENIED.

For the Court

George Lang III, Clerk

Carolyn Clark Cambell
Chief Deputy Clerk

(2)

Supreme Court, U.S.
FILED
AUG 26 1994
OFFICE OF THE CLERK

No. 94-205

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

JEROME H. FIELD,

Petitioner,

vs.

DONALD J. EASTON, NAP'S TRUCK LEASING CORP. and SWAN TRUCKING CORP.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

Petitioner continues in his crusade to enlarge a simple negligence case to a matter of significance for the entire nation. A review of the record reveals that throughout this matter, plaintiff has refused to accept the strong judgments of the various tribunals before which he has pled his case, namely, the jury, the trial court and the Second Circuit Court of Appeals.

Petitioner has now reached the final arbiter. Once again, his prose is a melange of thoughts loosely knit together. Syntax fades away at times. Terms such as "Fourth Amendment Rights", "Due Process" and other well-worn phrases are interspersed throughout so as to give his prose a faux-legitimacy. However, his Petition is devoid of an arguable basis as to why Certiorari should be granted. The Peti

tion does not contain a single legal argument that sets forth precisely how the Second Circuit has ". . . decided a federal question in a way that conflicts with applicable decisions of this Court", or ". . . an important question of federal law which has not been, but should be, settled by this Court . . . ." Sup. Ct. R. 10.1(c). Nor has Petitioner demonstrated, that the Second Circuit ". . . has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision." Sup. Ct. R. 10.1(a).

SUMMARY OF ARGUMENT

In his post trial motions and appeal to the Second Circuit, as well as in the this Petition, Petitioner's rambling arguments have clustered around certain recurring

themes, to wit, that the district court wrongfully a) bifurcated his trial; b) excluded certain documents from evidence; c) wrongfully instructed the jury; and d) wrongfully awarded sanctions to the defendant-respondents. Petitioner now claims that the Second Circuit erred in affirming the actions of the lower court. Yet, Petitioner's contentions lack any legal basis.

ARGUMENT

I. Exclusion of Evidence.

During the course of his trial, the Petitioner attempted to introduce certain U.S. Department of Transportation inspection reports regarding defendant-respondent's vehicle, namely, inspections performed approximately two years prior and four months subsequent to the accident. These reports were properly excluded by the trial court on the basis that they had

little, if any, relevance to the facts in issue. The Second Circuit properly found that the lower court did not abuse its discretion in failing to admit same. Petitioner has set forth no legal basis for review of the Second Circuit's decision.

II. Bifurcation:

The Petition sets forth no basis as to why the Second Circuit's holding that the trial court did not abuse its discretion in ordering bifurcation under Fed. R. Civ. P. 42(b) merits review by this Court under the criteria set forth in Sup. Ct. R. 10.

III. Jury Charges:

Petitioner fails to set forth a legal basis as to why the Second Circuit's finding that the charge of the trial court "presented the liability issues to the jury in an evenhanded manner" (Field v.

Easton, No. 93-7775 (U.S. Ct. App. 2d Cir. filed April 25, 1994, A. 8), merits review by this Court under Sup. Ct. R. 10.

IV. Sanctions:

The Second Circuit found that the trial court did not abuse its discretion when it awarded sanctions against Petitioner for designating as an "expert" witness someone whose expertise consisted solely of reading portions of textbooks. Field v. Easton, No. 93-7775 (U.S. Ct. App. 2d Cir. filed April 25, 1994, A. 7-8). Petitioner now appears to be arguing that Rule 11 gives a trial court no authority to impose sanctions for abuses occurring at or during depositions and that the Appellate Court erred in affirming the award. The version of Rule 11 in effect at the time of the acts committed by Petitioner provided "[e]very pleading, motion or other paper shall be signed by

at least one attorney of record . . ." and that such signature shall constitute a certification ". . . that to the best of the signer's knowledge, information and belief formed after reasonable inquiry [such pleading, motion or other paper] is well grounded in fact . . ." and allowed a trial court to impose sanctions for pleadings, motions or other papers signed in violation of the Rule. Fed. R. Civ. P. 11 (as amended Apr. 28, 1983, eff. Aug 1, 1983; Mar. 2, 1987; eff. Aug. 1, 1987; amended Apr. 22, 1993, eff. Dec. 1, 1993). It is uncontested that Petitioner himself signed documents designating his so-called expert. Therefore, the award of sanctions by the trial court, and its affirmance by the Second Circuit was proper in all respects.

CONCLUSION

Respondent respectfully requests that the within Petition be denied.

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Garden City, New York

Respectfully Submitted:

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